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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 09/994,257
Filing Date: November 26, 2001
Appellant(s): SCHLOSSER ET AL.

Steven L. Webb
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/7/05 appealing from the Office action mailed 9/9/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The amendment after final rejection filed on 11/7/05 has not been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

A substantially correct copy of appealed claims 1, 3-10, 12-19, 23-27, 30-33, 50, and 51 appears on page 8-12 of the Appendix to the appellant's brief. The minor errors are as follows: In claim 1, line 6, - -(polytetrafluoroethylene)- - should have been

immediately inserted after "PTFE", and - -(perfluoroalkoxy copolymer)- - should been inserted after "PFA".

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1, 16, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sipin (4,559,833) in view of Van der Pol (5,918,285).**

Sipin discloses manufacturing a Coriolis flowmeter adapted to extend a received process material flow having an ultra high level of purity free from contamination due to ion transfer from the Coriolis flowmeter to the process material. Sipin discloses a flow tube means (72) coupled to a base (74), a driver (84) affixed to the flow tube means (72) pick-off means (86) coupled to the flow tube means, and inlet and outlet ends of the flow tube means affixed to at least one process connection (76, 78). The process connections are coupled to the base (74) via the flow tube means (72). *See column 6, lines 1-15, and figure 9 for further clarification.*

Sipin, however, does not disclose the flow tube means being formed entirely from PTFE or PFA, or the process connection being formed from PTFE or PFA.

Van der Pol discloses forming a flow tube means (4) entirely from PTFE or PFA. *See column 4, lines 29-32 for further clarification.*

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to form the flow tube means of Sipin including the process connections entirely from PTFE or PFA, in light of the teachings of Van der Pol, in order to effectively keep the process material free from contaminants.

**Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sipin/Van der Pol as applied to claim 1 above, and further in view of Bitto et al. (US 6,711,958 B2).**

Sipin/Van der Pol as modified above discloses all of the claimed subject matter except for affixing a temperature sensing device to the Coriolis flowmeter, or the step of affixing comprising affixing a resistance temperature measuring device to the Coriolis flowmeter.

Bitto discloses affixing a temperature sensing device (9) to the Coriolis flowmeter (1), wherein the device is a resistance temperature measuring device (i.e. platinum resistance element). *See column 11, lines 1-7 and figures 2-3 for further clarification.*

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to affix a temperature sensing device such as resistance temperature measuring device to the Coriolis flowmeter of Sipin, in light of the teachings of Bitto, in order to effectively measure the current temperature of a fluid.

**(10) Response to Argument**

Appellant argues that since only the thin walled segments of Van de Pol vibrate, Van der Pol cannot teach a flow tube that vibrates along its length made entirely from PFA or PTFE and therefore the combination of Van der Pol and Sipin do not form an operable structure that makes obvious the invention of claim 1 hence the cited art does not teach or suggest every element of the claim.

In response, the Examiner maintains that the Sipin discloses the limitations of the flow tube being able to vibrate along its length wherein the flow tube is made from a

material, and Van der Pol shows that the flow tube of a Coriolis flowmeter can consist entirely of PTFE or PFA. The selection of PTFE or PFA as the material of the flow tube means is explicit stated at column 4, lines 29-32 of Van der Pol, and therefore the combination of Sipin and Van der Pol does teach and suggest every element of the claim.

Appellant argues that the material used for the vibrating element in one type of Coriolis flow meter may not work for a Coriolis flow meter with a different type of vibrating element and that the Examiner therefore used impermissible hindsight to substitute a PTFE material from a Coriolis flow meter with one type of vibrating element into the design of a Coriolis flow meter with a completely different type of vibrating element.

In response to Appellant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, each of the references involved are directed to the same type of device that being a Coriolis flowmeter. Sipin discloses a flowmeter comprised of metal wherein Van der Pol discloses a flowmeter consisting of either metal or plastics such as PTFE or PFA. The flow tube means (4) of Van der Pol consists of either metal or

plastics such as PTFE or PFA which essentially means that the entire length of the tube is made of either PTFE or PFA. The Coriolis flowmeter of Sipin meets all the other limitations of claim 1 except for the material composition of the flow tube means being PTFE of PFA. Van der Pol employs the use of PTFE or PFA as the material for the flow tube means (4) to aid in the determination of Coriolis forces/oscillations.

Appellant argues that the Examiner's rejection of claim 1 is devoid of evidence providing motivation to combine.

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sipin discloses all of the claimed subject matter as explained in detail above except for the flow tube means being formed entirely of PTFE or PFA. Van der Pol provides the teaching of forming the flow tube means entirely of PTFE or PFA in order to aid in the determination of Coriolis forces/oscillations. Therefore, the base teachings of Sipin in combination with the motivation teaching provided by Van der Pol renders Appellant's claims obvious.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jermie Cozart

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